

THE TRIAL OF SUSAN B. ANTHONY

[1]

I. INTRODUCTION

NARRATOR 1: Each year, on the first Tuesday in November, men and women throughout this country have the opportunity to exercise one of the great privileges of citizenship -- they get to vote. Women, however, did not always have that right. **[2]** In New York, women did not acquire the right to vote until 1917. When New York gave women the franchise that year, it became the twelfth -- and the largest -- state in the union to do so. The change in voting rights in New York therefore set the stage for the passage in 1919 of the Nineteenth Amendment to the U.S. Constitution and its ratification in 1920.

NARRATOR 2: But it was almost half a century earlier, in 1872, that Susan B. Anthony, who was perhaps the nation's first female politician, cast her vote in a presidential election in Rochester, New York -- a vote that led to her arrest and prosecution.

In this program, we revisit that vote and the federal criminal trial that followed. In the trial scenes, the words you will hear are drawn from the trial transcripts and are the actual words spoken in court, with some editing for length. In the other scenes, we have used our imagination, although many of the words are drawn from Susan B. Anthony's letters and other first-hand accounts of the events. **[3]** Ladies and gentlemen, the Trial of Susan B. Anthony.

II. Registration

[NARRATOR 1: [4] It is November 1, 1872 in Rochester, NY. Three election registers, Mr. Beverly Jones, Edwin Marsh, and William Hall, are in a barbershop that has been converted into a temporary registration office. Susan B. Anthony and her three sisters enter.

JONES (*skeptically*): May I help you?

SBA: Yes you may! We are here to register to vote!

MARSH: Pardon me?

SBA: We are here to register! Surely you've heard of the Fourteenth Amendment, recently ratified by the states?

JONES: I have

SBA: We demand that you register us to vote. [5] The Fourteenth Amendment provides that "[a]ll persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." I am a citizen, am I not?

JONES: I'm sorry, ma'am, only male citizens have the franchise.

SBA: "If you refuse us our right as citizens, I will bring charges against you in Criminal Court and I will sue each of you personally for large, exemplary damages! I know I can win. I have Judge Selden as a lawyer."

NARRATOR 2: The Fourteenth Amendment had been adopted in 1868, just four years earlier. Henry Selden was a retired judge who had once served on the New York Court of Appeals. [6] He had also served as lieutenant governor and as a state legislator. He was an active abolitionist and had even been offered a place on the 1860 presidential ballot as Lincoln's running-mate. Anthony admired and trusted him and she was not alone in doing so.

JONES (*to other inspectors*): Maybe we should check with a supervisor.

(*enter Warner, a supervisor; the men confer*)

JONES (*to Warner*): Mr. Warner, sir, Miss Anthony insists that we permit her to register. What do you recommend that we do? Miss Anthony does not seem easily dissuaded, yet I cannot

believe that Congress meant to change the entire order of things so drastically with the Fourteenth Amendment.

WARNER: Men, do you know the penalty of law if you refuse to register these names? Let us register these women. That will put the entire onus of the affair on them.

MARSH: It's decided then. Miss Anthony and her sisters may register
(Marsh turns to SBA and allows her to sign register)

SBA (to sisters): Can you believe it? I expected to be denied registration and then I was going to sue for my right to vote in federal court.

[SBA, sisters exit. Warner exits and is replaced by Lewis. Inspectors remain.]

III. VOTING

NARRATOR 1: It is now early morning four days later, November 5, 1872. [7] Present at the polling station are the three election inspectors again as well as a Democratic poll-watcher named Sylvester Lewis. Miss Anthony and a few female companions approach, prepared to vote.

[Anthony and other voters enter stage. Anthony speaks before reaching the inspectors.]

SBA (to one of the women): Did you read the latest editorial in the Rochester Union and Advertiser? *(opening newspaper)* "Citizenship no more carries the right to vote than it carries the power to fly to the moon If these women in the Eighth Ward offer to vote, they should be challenged, and if they take the oaths and the Inspectors receive and deposit their ballots, they should all be prosecuted to the full extent of the law!"

(closing newspaper) Well, we have registered to vote and vote we shall.

(arriving at polling station)

(to Marsh) Good morning!

MARSH: Good morning

SBA: We are here to vote. [8]

MARSH: Ma'am, you are not qualified to vote. Only male citizens may vote

SBA: Sir, you are well aware that I lawfully registered to vote not just four days ago! I may vote just like you or any man. Now put these ballots in their proper boxes.

LEWIS: Now hold on, you gentlemen simply cannot accept her ballots. It's against the law for her to vote.

MARSH: Mr. Lewis, would you be so quick to complain if Miss Anthony were voting the Democratic ticket?

LEWIS: That has nothing to do with it.

HALL: What do you say Marsh!

MARSH: I say put the ballots in!

JONES: So do I and "we'll fight it out on this line if it takes all winter."

MARSH (to SBA): Ma'am, your ballot please?

SBA (with elation, as she hands over her ballot): I voted! I must write to my good friend Mrs. Elizabeth Cady Stanton straight away and tell her the news!

[All exit except for Anthony, who goes to "writing desk"]

SBA (sitting and writing): [9]

Dear Mrs Stanton, Well, I have gone & done it!! I positively voted the Republican ticket, straight this morning at 7 o'clock. I was registered on Friday and fifteen other women followed suit in this ward. Then on Sunday, some twenty or thirty other women tried to register, but all save two were refused -- all my three sisters voted. And Judge Selden will be our Counsel -- he

has read up the law and considered our arguments and is satisfied that we [voted as] our right.
So we are in for a fine agitation in Rochester on the question.

[Anthony remains at writing desk]

IV. ARREST

NARRATOR 2: A complaint was filed against the women voters and the inspectors who accepted their votes. Sylvester Lewis, the poll-watcher, claimed in the press not to know whether he was the accuser, but he justified his challenge on election day, and made his views on women's suffrage clear.

LEWIS: "Let them choose for themselves a legal representative whose duty it shall be to assist in making the laws and grappling with the more stern realities of life, while she contents herself to attend to the domestic affairs of her household."

[Lewis exits]

NARRATOR 1: U.S. Commissioner William C. Storrs issued a warrant for Anthony's arrest on November 14th [10] but delayed her arrest by four days so he could confer with the U.S. Attorney for the Northern District of New York, Richard Crowley, about prosecuting the case. [11] The arrest went forward on November 18th at the Anthony home. [12]

(Keeney knocking on door)

MARY ANTHONY: Who is it?

KEENEY: Deputy Marshall Keeney

MARY ANTHONY: And to what do we owe the pleasure of your visit?

KEENEY: I would like to speak with Miss Susan B. Anthony. Would you please ask her to come down to the parlor?

MARY ANTHONY: Please have a seat.

(Keeney sits. Mary walks over to SBA at writing desk.)

MARY ANTHONY: The deputy marshal is here. I think he means to arrest you.

SBA *(excitedly):* I knew it! Remember a few days ago when Commissioner Storrs sent word “to call at his office?” And then “I sent word to him that I had no social acquaintance with him and didn’t wish to call on him.” Well this is the other shoe dropping.

(SBA and sister return to where Keeney is standing. Keeney jumps up when she walks in.)

SBA: Deputy Keeney. I hear you have some business with me.

KEENEY: Ma’am, I am here to arrest you.

SBA: What for?

KEENEY: For voting. As a woman, you’re not allowed to vote.

SBA: That’s not what my attorney told me. Do you have a warrant?

KEENEY: Yes, yes I do.

SBA: Well let me see it!

KEENEY: You want to –

SBA: Of course I want to see it – I want to see the charges that have been brought against me.

KEENEY: Well if you must –

SBA *(reviewing the warrant):* But this law I supposedly violated was passed to stop Southern rebels from voting! I’ll fight this thing. Go on -- arrest me *(holding out her hands)*.

KEENEY: Ma’am I am not going to put handcuffs on you!

SBA: “Is that the way you arrest men?”

KEENEY: Um, no.

MARY ANTHONY: You go ahead sir, and we’ll follow.

SBA: We will do no such thing. Deputy Keeney, you will arrest me properly. That's the whole point – I want to be treated equally.

NARRATOR 2: Keeney did arrest her properly and took her to the Commissioner's office in a horse-drawn car. When he took out the money to pay the fare, Anthony asked him if he was doing so out of official duty or chivalry. He said that he was obliged to pay the fare of any criminal he arrested. In another account of the event, Anthony said to the driver,

SBA: "I'm traveling at the expense of the government. This gentleman is escorting me to jail. Ask him for my fare."

[All exit]

V. BAIL, NOT HABEAS

NARRATOR 1: Susan B. Anthony was not the only woman arrested for voting; fourteen others were as well. [13] On November 29, 1872, US Commissioner Storrs conducted a preliminary examination to consider whether the charges would be referred to a grand jury. Sylvester Lewis, the 8th Ward election inspectors, and Susan B. Anthony all testified. Legal arguments were heard on December 23rd. [14]

[Anthony and other women voters gather]

NARRATOR 1: Anthony and the 14 other women voters appeared in court. A large audience came to see the proceedings, expecting to see a group of bold women seeking notoriety. But, as the press reported [15]:

REPORTER: They were surprised to find that "the majority of these law-breakers were elderly, matronly-looking women with thoughtful faces, just the sort one would like to see in charge of one's sick-room -- considerate, patient, kindly."

(Anthony & women voters stand facing audience, smiling and looking around like doting grandmothers)

NARRATOR 2: After hearing the evidence, Commissioner Storrs determined that all fifteen women voters likely violated the law.

(Anthony & other women voters stop smiling)

Bail was set at \$500. Anthony was the only defendant who refused to pay the bail and so she was remanded to custody.

(Anthony stands with her hands crossed while the other ladies pick money out of their purses and file out of court, waving to family)

(Anthony walks to writing desk while Narrator speaks)

NARRATOR 1: The experience of their indictment changed the women, though. In May of 1873 they founded the Women Taxpayers' Association of Monroe County to protest their taxation without representation. Miss Anthony corresponded with friends and colleagues about the legal challenges. [16]

SBA: *(sitting and writing a letter; her writing is punctuated by excited gesticulations):*

“We shall be rescued from the Marshal’s hands on a Writ of Habeas Corpus -- and our case carried to the Supreme Court of the U. S. -- the speediest process of getting there.”

[17]

SBA writing another letter: “[Dear Mrs. Wright] . . . My Attorney goes to Judge Hall tomorrow with demand for writ of Habeas Corpus -- the contingencies of getting our question to the Supreme Court are numerous. But I hope and trust that some of the chances will turn in our direction.”

NARRATOR 2: It's not clear that Anthony's lawyers recognized that one of these "contingencies" was a change in procedure. Five years earlier, Miss Anthony would have been able to appeal a district court's denial of habeas corpus directly to the Supreme Court. But Congress repealed that provision in 1868.

(Anthony, Selden and Van Voorhis take seats at defense table. Crowley sits at government table. Judge Hall is on the bench. Clerk is seated at clerk's desk)

NARRATOR 1: [18] Anthony's petition for writ of habeas corpus was submitted on January 2, 1873. [19] The hearing took place on January 21st, before United States District Judge Nathan Hall *(Judge Hall takes the bench)*. Selden argued her cause. [20]

SELDEN: A writ should be granted releasing my client from custody because, rather than committing a crime, she exercised a right. A constitutional and lawful right to offer her ballot and have it received and counted. And, in the alternative, if she does not have that right, and I must concede that the matter is unsettled in the courts, then certainly she acted with a good faith belief that she had the right to vote and she therefore lacked criminal intent.

NARRATOR 2: As Richard Crowley, the United States Attorney, stood to argue for the Government, Judge Hall interjected:

JUDGE HALL *(cutting off Crowley)*: I don't need to hear from the government. Petition denied.

NARRATOR 1: The Grand Jury indicted Anthony and the other fourteen women voters on January 24, 1873. [21]

JUDGE HALL: How do you plead?

(Selden, Van Voorhis and SBA stand)

SBA: Not guilty.

JUDGE HALL: Bail is set at one thousand dollars.

SBA: I refuse to pay it! I prefer to go to jail!

SELDEN: There are times when a client must be guided by advice of her counsel. Here is the payment on the bond.

(Selden approaches clerk. Van Voorhis walks toward well.)

(Anthony walks over to Van Voorhis .)

NARRATOR 2: Miss Anthony was also represented by John Van Voorhis. [22] Anthony noted in her diary that he had researched procedural issues in her case relating to habeas corpus.

VAN VOORHIS: “You have lost your chance to get your case before the Supreme Court by writ of habeas corpus!”

SBA: Whatever do you mean?!

VAN VOORHIS: The bail – if you’re not in custody then there’s no need for a writ!

(Anthony exclaims in surprise and rushes over to the Judge)

SBA: Cancel it! You must cancel the bail payment!

JUDGE HALL: Sorry, Miss Anthony. It’s done and it cannot be undone.

SBA *(turns to Selden, bitterly disappointed and demands):* “Did you not know that you had estopped me from carrying my case to the Supreme Court?”

SELDEN: “Yes, but I could not see a lady I respected put in jail.”

NARRATOR 1: As Miss Anthony would later write about Selden:

SBA *(turning to audience):* He was a great lawyer – he never gave me a bill and he supported our suffrage efforts with a keen legal mind. But I never forgave him for this.

VI. THE TRIAL

NARRATOR 2: Susan B. Anthony was prosecuted under a federal statute, enacted in 1870, which provided as follows: [23]

If at any election for representative or delegate in the Congress of the United States, any person shall knowingly . . . vote without having a lawful right to vote , . . . every such person shall be deemed guilty of a crime

NARRATOR 1: At the Government's request, the case was transferred from the district court to the circuit court, which had concurrent jurisdiction. Under federal law at the time, the request could be made as a matter of course and without stating any reasons. But the reasons were obvious to observers. First, Anthony had been spending much of her time giving speeches to gain sympathy from potential jurors in the Rochester area. [24] Indeed, she literally went on the stump, speaking in town after town, on the topic: "Is it a Crime for a Citizen of the United States to Vote?" Anthony wrote about her efforts in a letter [25] to Senator Benjamin Butler:

SBA: "I have just closed a canvass of this county -- from which my jurors are to be drawn -- and I rather guess the U. S. District Attorney, who is very bitter, will hardly find twelve men so ignorant on the citizen's rights as to agree on a verdict of Guilty."

NARRATOR 2: The second reason for moving the case was to have it tried before Ward Hunt, a newly appointed associate justice of the U.S. Supreme Court, who was assigned to the circuit. [26] The Supreme Court had just narrowly construed the Fourteenth Amendment in two cases decided the month before the Government's request. One of those cases ruled that the federal government had no authority under the Fourteenth Amendment to overturn an Illinois law that prevented women from practicing law, which did not bode well for Anthony. So she started a new speaking tour.

(trial participants take their places in the courtroom)

NARRATOR 1: The case was tried in Canandaigua (CAN-a-DAY-gua), New York, on June 17, 1873, before Justice Hunt and a jury of twelve men. The second floor courtroom was filled to capacity. Among the spectators was Millard Fillmore, the former President of the United States. U.S. Attorney Richard Crowley gave the opening statement for the Government, and Judge Henry Selden opened for the defense.

[27]

(Judge bangs gavel)

JUDGE HUNT: United States v. Susan B. Anthony. Mr. Crowley, is the government ready?

CROWLEY Yes, sir.

JUDGE HUNT: And the defense, Mr. Selden?

SELDEN: Ready, your honor.

JUDGE HUNT: Mr. Crowley, you may proceed with your opening.

Prosecution opening (Crowley)

CROWLEY: May it please the Court and Gentlemen of the Jury:

On November 5, 1872, there was an election held for candidates to represent several districts of this State in the United States Congress.

The defendant, Susan B. Anthony, at the time resided in the city of Rochester, New York, voted for a representative to represent the 20th Congressional District of the State, and also for a representative at large to represent the State in the Congress of the United States.

At that time she was a woman. I suppose there will be no question about that.

SELDEN: “Your honor, gentlemen of the jury, the defense wishes to concede that Miss Susan B. Anthony (*pointing at SBA*) is indeed a woman.”

CROWLEY: The question in this case will be a question of law rather than one of fact. We think, on the part of the Government, that whatever Miss Anthony's intentions may have been -- whether they were good or otherwise -- she did not have a right to vote, and if she did vote without having a lawful right to vote, then there is no question but that she is guilty of violating a law of the United States.

Defense opening (Selden)

JUDGE HUNT: Mr. Selden, you may proceed.

SELDEN: If the Court please, *gentlemen* of the jury, this is a case of no ordinary magnitude. The question whether my client here had done anything to justify her being consigned to a felon's prison or not is one that interests her and the people very essentially. I claim that when she offered to have her name registered as a voter, and when she offered her vote for Member of Congress, she was as much entitled to vote as any man that voted at that election.

Whether she was entitled to vote or not, if she sincerely believed that she had a right to vote, and offered her ballot in good faith, under that belief, whether right or wrong, by the laws of this country she is guilty of no crime. The only question which, in my judgment, can come before you to be passed upon by you as a question of fact is whether or not she did vote in good faith, believing that she had a right to vote. . . .

Before the registration, and before this election, Miss Anthony called upon me for advice upon the question whether, under the Fourteenth Amendment of the Constitution of the United States, she had a right to vote. I advised her that she was as lawful a voter as I am, or as any other man is, and advised her to go and offer her vote. I may have been mistaken in that, and if I

was mistaken, I believe she acted in good faith. I believe she acted according to her right as the law and Constitution gave it to her. But whether she did or not, she acted in the most perfect good faith, and if she made a mistake, or if I made one, that is not a reason for committing her to a felon's cell.

[28]

NARRATOR 2: The Government called as its first witness Mr. Beverly Jones, one of the three election inspectors who had permitted Anthony to register and vote. Jones was the subject of criminal charges himself, for having received “the vote of a person not entitled to vote” and having registered a person “not entitled to be registered.” Under the law at the time, the Government was permitted to call as a witness a criminal defendant in a case that had not been tried yet. As the law later developed, Jones would have been permitted to invoke his Fifth Amendment right against self-incrimination.

Direct Examination of Jones by Mr. Crowley:

Q. Do you know the defendant, Miss Susan B. Anthony?

A. Yes, sir.

Q. In what capacity were you acting upon on November 5, 1872, if any, in relation to the election?

A. Inspector of election.

Q. Upon the 5th day of November, did the defendant, Susan B. Anthony, vote in the first election district of the 8th ward of the city of Rochester?

A. Yes, sir.

Q. Did you see her vote?

A. Yes, sir.

Q. Will you state to the jury what tickets she voted, whether State, Assembly, Congress, and Electoral?

SELDEN: Objection, your Honor, as it calls for a conclusion.

JUDGE HUNT: Overruled.

A. If I recollect right she voted the Electoral ticket, Congressional ticket, State ticket, and Assembly ticket.

Q. Did you receive the tickets from Miss Anthony?

A. Yes, sir.

Q. What did you do with them when you received them?

A. Put them in the separate boxes where they belonged.

Q. Was Miss Anthony challenged upon that occasion?

A. Yes, sir -- no; not on that day she wasn't.

Q. She was not challenged on the day she voted?

A. No, sir.

CROWLEY: No further questions, your Honor.

Cross-Examination of Jones by Mr. Selden

Q. Prior to the election, was there a registry of voters in that district made?

A. Yes, sir.

Q. Were you one of the officers engaged in making that registry?

A. Yes, sir.

Q. When the registry was being made did Miss Anthony appear before the Board of Registry and claim to be registered as a voter?

A. She did.

Q. Was there any objection made, or any doubt raised as to her right to vote?

A. There was.

Q. On what ground?

A. On the ground that the Constitution of the State of New York did not allow women to vote.

Q. What was the defect in her right to vote as a citizen?

A. She was not a male citizen.

Q. That she was a woman?

A. Yes, sir.

Q. Did the Board consider the question of her right to register, and decide that she was entitled to register as a voter?

CROWLEY: Objection.

JUDGE HUNT: Overruled. You may answer.

A. Yes, sir.

Q. And she was registered accordingly?

A. Yes, sir.

Q. At the time of the registry, when her name was registered, was the Supervisor of Election present at the Board?

A. He was.

Q. Was he consulted upon the question of whether she was entitled to register, or did he express an opinion on the subject to the inspectors?

CROWLEY: I submit it is of no consequence whether he did or not.

SELDEN: He was the Government supervisor under this act of Congress.

JUDGE HUNT: Overruled. You may take it.

A. Yes, sir; there was a United States Supervisor of Elections, two of them.

Q. Did they advise the registry, or did they not?

A. One of them did.

Q. And on that advice the registry was made with the judgment of the inspectors?

A. It had a great deal of weight with the inspectors, I have no doubt.

JUDGE HUNT: Mr. Crowley, any re-direct?

Re-direct Examination of Jones by Mr. Crowley

CROWLEY: Yes, your Honor.

Q. Was Miss Anthony challenged before the Board of Registry?

A. Not at the time she offered her name.

Q. Was she challenged at any time?

A. Yes, sir; the second day of the meeting of the Board.

Q. Was the preliminary and the general oath administered?

A. Yes, sir.

Q. Won't you state what Miss Anthony said, if she said anything, when she came there and offered her name for registration?

A. She stated that she did not claim any rights under the constitution of the State of New York; she claimed her right under the Constitution of the United States.

Q. Did she name any particular amendment?

A. Yes, sir; she cited the Fourteenth Amendment.

Q. Under that she claimed her right to vote?

A. Yes, sir.

Q. Did the other Federal Supervisor who was present, state it as his opinion that she was entitled to vote under that amendment, or did he protest, claiming that she did not have the right to vote?

A. One of them said that there was no way for the inspectors to get around placing the name upon the register; the other one, when she came in, left the room.

(Crowley returns to seat)

Case for the Defense

JUDGE HUNT: Mr. Selden, you may proceed.

SELDEN: For the second time in my life, in my professional practice, I am under the necessity of offering myself as a witness for my client.

(Selden takes the witness stand)

NARRATOR 1: Selden should not have been her lawyer if he was going to be a witness in her case, but he took the stand nevertheless.

SELDEN: Before the last election, Miss Anthony called upon me for advice, upon the question whether she was or was not a legal voter. I examined the question, and gave her my opinion, unhesitatingly, that the laws and Constitution of the United States, authorized her to vote, as well as they authorize any man to vote; and I advised her to have her name placed upon the registry and to vote at the election, if the inspectors should receive her vote. I gave the advice in good faith, believing it to be accurate, and I believe it to be accurate still.

JUDGE HUNT: Mr. Crowley?

CROWLEY: No questions, Your Honor.

SELDEN: I propose to call Miss Anthony as to the fact of her voting -- on the question of the intention or belief under which she voted.

(Anthony stands and begins walking to witness stand)

CROWLEY: She is not competent as a witness in her own behalf.

JUDGE HUNT: Yes, she is not a competent witness. Sustained.

(Anthony stops, turns around and returns to seat, miffed)

SELDEN: The defense rests.

HUNT: Does the government wish to present any rebuttal testimony?

CROWLEY: I call Mr. John Pound.

(Pound takes witness stand and Crowley walks to podium while Narrator speaks)

NARRATOR 2: At the time, women were not considered "competent" to testify as witnesses at trial, and thus Anthony was unable to testify in her own defense. But the Government called Pound, the Assistant United States Attorney who handled the preliminary examination at which Storrs determined that Anthony had probably violated the law, to testify. Anthony had been permitted to offer testimony at the preliminary examination, and Pound was asked to recount some of what Anthony said.

Rebuttal Witness for the Prosecution

Examined by Mr. Crowley

Q. Do you know the defendant, Susan B. Anthony?

A. Yes, sir.

Q. Did you attend an examination before William C. Storrs, a United States Commissioner, in the city of Rochester, when her case was examined?

A. I did.

Q. Was she called as a witness in her own behalf upon that examination?

A. She was.

Q. Was she sworn?

A. She was.

Q. Did she give evidence?

A. She did.

Q. Did you keep minutes of evidence on that occasion?

A. I did.

Q. (*Handling the witness a paper*) Please look at the paper now shown you and see if it contains the minutes you kept upon that occasion?

A. It does.

Q. Turn to the evidence of Susan B. Anthony?

A. I have it.

Q. Did she, upon that occasion, state that she consulted or talked with Judge Henry R. Selden, of Rochester, in relation to her right to vote?

SELDEN: I object to that upon the ground that it is incompetent, that if they refuse to allow her to be sworn here, they should be excluded from producing any evidence that she gave elsewhere, especially when they want to give the version which the United States officer took of her evidence.

JUDGE HUNT: Overruled. Go on.

By Mr. Crowley:

Q. State whether she stated on that examination, under oath, that she had talked or consulted with Judge Henry R. Selden in relation to her right to vote?

A. She did.

Q. State whether she was asked, upon that examination, if the advice given her by Judge Henry Selden would or did make any difference in her action in voting, or in substance that?

A. She stated on the cross-examination, "I should have made the same endeavor to vote that I did had I not consulted Judge Selden. I didn't consult any one before I registered. I was not influenced by his advice in the matter at all; I have been resolved to vote, the first time I was at home 30 days, for a number of years."

(Crowley returns to his seat)

JUDGE HUNT: Mr. Van Voorhis, your witness.

(Van Voorhis walks to podium while Narrator begins speaking)

NARRATOR 1: Van Voorhis represented Anthony at the preliminary hearing where she testified.

Cross-examination by Mr. Van Voorhis

Q. Mr. Pound, was she asked there if she had any doubt about her right to vote, and did she answer "Not a particle?"

A. She stated. "Had no doubt as to my right to vote," on the direct examination.

Q. There was a stenographic reporter there, was there not?

A. A reporter was there taking notes.

Q. Was not this question put to her "Did you have any doubt yourself of your right to vote?" and did she not answer "Not a particle?"

(SBA whispers to Selden)

JUDGE HUNT: Well, he says so, that she had no doubt of her right to vote.

SELDEN: I beg leave to state, in regard to my own testimony, Miss Anthony informs me that I was mistaken in the fact that my advice was before her registry. It was my recollection that

it was on her way to the registry, but she states to me now that she was registered and came immediately to my office. In that respect I was under a mistake.

The defense rests.

NARRATOR 2: Selden then proceeded to make a three-hour argument on the legal issues in the case. He began by arguing that Anthony was being prosecuted solely because of her gender, and he contended that the Fourteenth Amendment gave women a constitutional right to vote. [29]

Argument of Mr. Selden for the Defendant.

SELDEN: The defendant is indicted for "voting without having a lawful right to vote." The only alleged ground of illegality of the defendant's vote is that she is a woman. If the same act had been done by her brother under the same circumstances, the act would have been not only innocent, but honorable and laudable; but having been done by a woman it is said to be a crime. The crime therefore consists not in the act done, but in the simple fact that the person doing it was a woman and not a man. I believe this is the first instance in which a woman has been arraigned in a criminal court merely on account of her sex.

Women have the same interest that men have in the establishment and maintenance of good government; they are to the same extent as men bound to obey the laws; they suffer to the same extent by bad laws, and profit to the same extent by good laws; and upon principles of equal justice, they should be allowed equally with men to express their preference in the choice of law-makers and rulers. No greater absurdity could be presented than that of rewarding men and punishing women, for the same act, without giving to women any voice in the question which act should be rewarded, and which punished.

NARRATOR 1: Selden spoke about the changes in the rights of women, many of which occurred in recent history.

SELDEN: Prior to 1848 all the personal property of every woman on marriage became the absolute property of the husband He could squander it in dissipation or bestow it upon harlots, and the wife could not touch or interfere with it. . . .The state of the law has undergone great changes within the last 25 years. The property, real and personal, which a woman possesses before marriage, remains her own, and is free from the control of her husband.

NARRATOR 2: Selden then went through a litany of historical societal injustices to women, making the point that these practices would not have been tolerated if women had had a greater say in government by virtue of the vote.

SELDEN: Let us look at the matter historically and on a broader field.

[30 -- Map]

If Chinese women were allowed an equal share with men in shaping the laws of that great empire, would they subject their female children to torture with bandaged feet, **[30 -- China]** that they might be cripples for the residue of their lives?

[30 -- India]

If Hindu women could have shaped the laws of India, would widows for ages have been burned on the funeral pyres of their deceased husbands?

[30 -- Persia]

Would women in Turkey or Persia have made it a heinous offence for a wife to be seen abroad with her face not covered by an impenetrable veil?

The principle which governs in these cases . . . has been at all times and everywhere the same. Those who succeed in obtaining power, no matter by what means, will, with rare exceptions, use it for their exclusive benefit.

Persons who are denied all share in the choice of rulers, in the making and administration of the laws are essentially slaves, because they hold their rights, if they can be said to have any, subject to the will of those who hold the political power. For this reason it has been found necessary to give the ballot to the emancipated slaves. Until this was done their emancipation was far from complete.

[31]

What, then, are the “privileges and immunities of citizens of the United States” that are secured against such abridgement by this section? I claim that these terms not only include the right of voting for public officers, but that they include that right as the most important of all the privileges and immunities to which the section refers. The possession of this voice, in the making and administration of the laws – this political right – is what gives security and value to the other rights, which are merely personal, not political. A person deprived of political rights is essentially a slave, because he holds his personal rights subject to the will of those who possess the political power.

By virtue of the fourteenth amendment, I insist that the act of Miss Anthony in voting was lawful.

NARRATOR 1: Judge Selden recognized that the language of Section 2 of the 14th Amendment [32] which limited the ability of the states to restrict the voting rights of “male citizens” and “male inhabitants” -- might undermine his argument. Accordingly, he argued that

section 2 merely restricted what states could do, and that it did not give the states the power to deny citizens the right to vote.

Judge Selden then turned his attention to certain common objections to allowing women to vote.

[33]

SELDEN: It is said that women do not desire to vote. **[33 -- Women do not desire to vote]**

Certainly many women do not, but that furnishes no reason for denying the right to those who do desire to vote. Many men decline to vote. Is that a reason for denying the right to those who would vote?

[33 – cross out words]

Another objection is that the right to hold office must attend the right to vote, **[33 -- Women are not qualified to vote]** and that women are not qualified to discharge the duties of responsible offices. I beg leave to answer this objection by asking: How many of the male bipeds who do our voting are qualified to hold high office? **[34]**

[35 – cross out words]

Another objection is that women cannot serve as soldiers. **[35 -- Women cannot serve]** To this I answer that capacity for military service has never been made a test of the right to vote.

[35 -- cross out words]

Another objection is that engaging in political controversies is not consistent with the feminine character. **[35 -- inconsistent with feminine character]** Upon that subject, women themselves are the best judges, and if political duties should be found inconsistent with female delicacy, we may rest assured that women will either effect a change in the character of political

contests, or decline to engage in them. This subject may be safely left to their sense of delicacy and propriety.

[35 – cross out the words]

NARRATOR 2: Selden then turned to his final point – the good faith defense. Selden argued that even if the Fourteenth Amendment did not give women the right to vote, Miss Anthony was still not guilty because she voted based on a good faith belief that her vote *was* legal.

[36]

SELDEN: Conceding that I may be in error in supposing that Miss Anthony had a right to vote, she has been guilty of no crime, if she voted in good faith believing that she had such right. I concede that if Miss Anthony had dressed herself in men's apparel, and assumed a man's name, or resorted to any other artifice to deceive the board of inspectors, the jury might properly pronounce her guilty of the offense charged. All I claim is that if she voted in perfect good faith, believing that it was her right, she has committed no crime.

NARRATOR 1: The trial adjourned to the next day. **[37]** Speaking for two hours, U.S. Attorney Crowley presented the Government's argument. He relied on recent Supreme Court decisions holding that the states still controlled the right to vote, except in certain limited instances. He argued that the Fifteenth Amendment to the U.S. Constitution **[38]**, which prohibited the states from restricting the right to vote based on certain categories, did not extend to gender.

CROWLEY: The only question in the case is: had the defendant, being a female, the right to vote? it being conceded that she is a female, and did vote at the time and place, and for members of Congress, as charged in the indictment.

Under the Constitution of the State of New York, the defendant clearly had no right to vote. Nothing in the Constitution of the United States, except the Fifteenth Amendment, takes from the respective States the right to prescribe the qualifications of its voters.

The Fifteenth Amendment takes from the states the right to prescribe qualifications in regard to voting only “on account of race, color, or previous condition of servitude” – leaving them untrammelled as to sex, and other qualifications.

It must be held that the adoption of the Fourteenth Amendment did not in any respect take from the States the power to regulate the qualifications of voters, so far as sex is concerned.

[39]

NARRATOR 2: When the U.S. Attorney completed his argument, Justice Hunt removed some papers from his pocket and began to read. He had written his decision in advance.

JUDGE HUNT: Gentlemen of the Jury: The defendant insists that she has a right to vote; that the provision of the Constitution of this State limiting the right to vote to persons of the male sex is in violation of the 14th Amendment of the Constitution of the United States, and is void. The right of voting, or the privilege of voting, is a right or privilege arising under the Constitution of the State, and not of the United States. The qualifications are different in the different States. If the right belongs to any particular person, it is because such person is entitled to it by the laws of the State where he offers to exercise it, and not because of citizenship of the United States.

The inability of a State to abridge the right of voting on account of race, color, or previous condition of servitude, arises from a Federal guaranty. Its violation would be the denial of a Federal right -- that is, a right belonging to the claimant as a citizen of the United States.

This right, however, exists by virtue of the 15th Amendment. If the 15th Amendment had contained the word "sex," the argument of the defendant would have been potent. The amendment, however, does not contain that word. It is limited to race, color, or previous condition of servitude.

The 14th Amendment gives no right to a woman to vote, and the voting by Miss Anthony was in violation of the law.

Upon this evidence I suppose there is no question for the jury and that the jury should be directed to find a verdict of guilty.

NARRATOR 1: With those final words, Justice Hunt directed the jury to convict Susan B. Anthony of illegal voting. Judge Selden immediately rose to protest.

SELDEN: I suppose that it is for the jury to determine whether the defendant is guilty of a crime or not. And I therefore ask your Honor to submit these issues to the jury.

JUDGE HUNT: I have decided as a question of law, in the first place, that under the Fourteenth Amendment, which Miss Anthony claims protects her, she was not protected in a right to vote. And I have decided also that her belief and the advice which she took does not protect her in the act which she committed. If I am right in this, the result must be a verdict on your part of guilty, and I therefore direct that the jury find a verdict of guilty.

SELDEN: That is a direction no Court has power to make in a criminal case.

JUDGE HUNT: I will take the verdict. Gentlemen of the jury, hearken to your verdict as the Court has recorded it. You say you find the defendant guilty of the offense whereof she stands indicted, and so say you all?

(pause for silence)

SELDEN: I don't know whether an exception is available, but I certainly must except to the refusal of the Court to submit the matter to the jury, and especially to the direction of the Court that the jury should find a verdict of guilty. I claim that it is a power that is not given to any Court in a criminal case.

Will the Court poll the jury?

JUDGE HUNT: No. Gentlemen of the jury, you are discharged.

NARRATOR 2: What the judge just did was improper. Judges could not then, and they cannot now, direct juries to convict a defendant in a criminal case. Even when the evidence of guilt is overwhelming, a jury still has the ability to nullify. And jurors are required to deliberate before a judge asks for their verdict. Also, under today's Federal Rules, if a party asks for the jury to be polled before being discharged, the judge is required to poll the jury. Judge Hunt disregarded these rules and procedures.

Outside of this case, Ward Hunt had little impact as a judge. He was on the Supreme Court for ten years, but he was till for the last four years and stopped going to arguments. Congress had to pass a special law to encourage him to retire. When he was active, he voted with the majority in all but 22 cases and he never wrote a majority opinion.

VII. THREE: DEFENSE MOTION FOR A NEW TRIAL

NARRATOR 1: The next day [40] Selden moved for a new trial.

SELDEN: May it please the Court: The trial of this case commenced with a question of very great magnitude -- whether by the constitution of the United States the right of suffrage was secured to female equally with male citizens. It is likely to close with a question of much greater magnitude -- whether the right of trial by jury is absolutely secured by the federal constitution to persons charged with crime before the federal courts.

NARRATOR 2: Selden then described the court's actions the day before: the Court's direction of a verdict, the Court's failure to ask the jury if it had reached a verdict, and the refusal of the Court even to poll the jury.

SELDEN: No response whatever was made by the jury, either by word or sign. They had not consulted together in their seats or otherwise. . . . Nor were they asked whether they had or had not agreed upon a verdict.

The defendant's counsel then asked that the jury be polled. The Court said, "that cannot be allowed. Gentlemen of the jury, you are discharged," and the jurors left the box. No juror spoke a word during the trial, from the time they were impaneled to the time of their discharge. Now I respectfully submit, that in these proceedings the defendant has been substantially denied her constitutional right of trial by jury. The jurors have been merely silent spectators of the conviction of the defendant by the Court. If such course is allowable in this case, it must be equally allowable in all criminal cases, whether the charge be for treason, murder or any minor grade of offence. If correct, the Court's actions would substantially abolish the right of trial by jury.

I insist that in every criminal case, where the defendant has pleaded not guilty, whether the guilt of such defendant appears to the Judge to be clear or not, the response to the question – guilty or not guilty? – must come from the jury, voluntarily, and cannot be imposed upon it by the Court.

How could the defendant be lawfully deprived of the right to ask every juror if the verdict had his assent? I believe this is a right which was never before denied to a party against whom a verdict was rendered in any case, either civil or criminal.

I claim therefore that the defendant is entitled to a new trial.

NARRATOR 1: Justice Hunt was unmoved. After hearing from the U.S. Attorney, he denied the motion for a new trial, holding that the right to a trial by jury “exists only in respect of a disputed fact,” and noting that no facts were in dispute. A newspaper later quoted a juror as saying:

(A juror sitting in the box stands and says)

JUROR: “Could I have spoken, I should have answered ‘not guilty,’ and the men in the jury box would have sustained me.”

VIII. SENTENCING

NARRATOR 2: The case immediately proceeded to sentencing. [41]

JUDGE HUNT: Will the defendant please rise?

(SBA rises)

Has the prisoner anything to say why sentence shall not be pronounced?

SBA: Yes, your honor, I have many things to say; for in your ordered verdict of guilty, you have trampled under foot every vital principle of our government. My natural rights, my civil rights, my political rights, my judicial rights, are all alike ignored. Robbed of the fundamental privilege of citizenship, I am degraded from the status of a citizen to that of a subject; and not only myself individually, but all of my sex, are, by your honor's verdict, doomed to political subjection under this, so-called, form of government.

JUDGE HUNT: The Court cannot listen to a rehearsal of arguments the prisoner's counsel has already consumed three hours in presenting.

SBA: May it please your honor, I am not arguing the question, but simply stating the reasons why sentence cannot, in justice, be pronounced against me. Your denial of my citizen's right to vote, is the denial of my right of consent as one of the governed, the denial of my right of

representation as one of the taxed, the denial of my right to a trial by a jury of my peers as an offender against law, therefore, the denial of my sacred rights to life, liberty, property and --

JUDGE HUNT: The Court cannot allow the prisoner to go on.

SBA: But your honor will not deny me this one and only poor privilege of protest; since the day of my arrest last November, this is the first time that either myself or any person of my disfranchised class has been allowed a word of defense before judge or jury --

JUDGE HUNT: The prisoner must sit down -- the Court cannot allow it.

SBA: All of my prosecutors, from the 8th ward corner grocery politician, who entered the complaint, to the United States Marshal, Commissioner, District Attorney, District Judge, your honor on the bench, not one is my peer, but each and all are my political sovereigns; and had your honor submitted my case to the jury, as was clearly your duty, even then I should have had just cause of protest, for not one of those men was my peer; but, native or foreign born, white or black, rich or poor, educated or ignorant, awake or asleep, sober or drunk, each and every man of them was my political superior; hence, in no sense, my peer.

JUDGE HUNT: The Court must insist -- the prisoner has been tried according to the established forms of law.

SBA: Yes, your honor, but by forms of law all made by men, interpreted by men, administered by men, in favor of men, and against women; and hence, your honor's ordered verdict of guilty; against a United States citizen for the exercise of "that citizen's right to vote," simply because that citizen was a woman and not a man. Just as the slaves who got their freedom had to take it over, or under, or through the unjust forms of law; precisely so, now must women take it to get their right to a voice in this government; and I have taken mine, and mean to take it at every possible opportunity.

JUDGE HUNT: The Court orders the prisoner to sit down. It will not allow another word.

SBA: When I was brought before your honor for trial, I hoped for a broad and liberal interpretation of the Constitution and its recent amendments, one that would declare equality of rights the national guarantee to all persons born or naturalized in the United States. But failing to get this justice -- failing, even, to get a trial by a jury *not* of my peers -- I ask not leniency at your hands -- but rather the full rigors of the law:

JUDGE HUNT: The Court must insist --

(SBA sits down)

JUDGE HUNT: The prisoner will stand up.

(SBA rises again)

The sentence of the Court is that you pay a fine of one hundred dollars and the costs of the prosecution.

SBA: May it please your honor, I shall never pay a dollar of your unjust penalty. All the stock in trade I possess is a \$10,000 debt, incurred by publishing my paper four years ago, the sole object of which was to educate all women to do precisely as I have done. And I shall work on with might and main to pay every dollar of that honest debt, but not a penny shall go to this unjust claim. And I shall earnestly and persistently continue to urge all women to the practical recognition of the old revolutionary maxim, that "Resistance to tyranny is obedience to God."

JUDGE HUNT: Madam, the Court will not order you committed until the fine is paid.

[All exit]

IX. AFTERMATH

NARRATOR 1: Justice Hunt's order that Anthony not be held in custody pending payment of the fine was not an act of judicial kindness; rather, he was seeking to preclude appellate review. Without an order committing her to prison until the fine was paid, Anthony had no order to appeal.

[42] The three election inspectors who were [42 -- tried and convicted] convicted -- by a jury -- in the trial that immediately followed were not as lucky. When they refused to pay their \$25 fines, they were imprisoned. [42 -- jailed] Miss Anthony came to their aid, however, telegraphing her contacts in Congress for assistance. Her contacts interceded with President Grant, and a week later he pardoned [42 -- pardoned] the men and remitted their fines. The same day, the voters in the 8th Ward reelected the inspectors to their posts. [42 -- reelected] [43] As for the fourteen other women who had been charged with illegal voting, they never stood trial. Two days after Miss Anthony was sentenced, U.S. Attorney Crowley entered a nolle prosequi or a declaration of no further prosecution in each of their cases. [43 -- nolle prosequi]

True to her word, Anthony never paid her fine. Although the government did not make a significant effort to collect a fine from Anthony, she petitioned Congress to void her conviction and sentence. [44] She wrote that she was "innocent as the Judge by whom she was convicted." She asked Congress that ...

[44 -- inasmuch as the law]

SBA: (*standing*) "inasmuch as the law has provided no means of reviewing the decisions of the Judge, or of correcting his errors, that the fine imposed upon your petitioner be remitted, as an expression of the sense of this high tribunal that her conviction was unjust."

NARRATOR 2: Miss Anthony's petition was unsuccessful, but she continued to fight in the arena of public opinion.

[45]

After the trial, Anthony ordered 3000 copies of the trial proceedings and distributed them to political activists, politicians, and libraries, in an effort to use her trial and conviction to further the women's suffrage movement.

It would be some time, however, before the movement would find success.

Later in 1874, the same year that Miss Anthony petitioned Congress, the Supreme Court unanimously decided Minor v. Happersett and rejected the argument that the Fourteenth Amendment guaranteed women the right to vote.

Eventually, the tide would turn. In 1878, a constitutional amendment was introduced in Congress to prohibit restricting the right to vote account of sex. That measure was defeated. It would be re-introduced and defeated for forty-one consecutive years! A handful of states amended their constitutions during those years to provide voting rights for women, including New York in November 1917.

[46] It was not until 1920, however, that the states ratified the 19th Amendment, prohibiting states from restricting the rights of citizens to vote because of their sex.

Susan B. Anthony did not live to see the realization of her life's work. [47] She died in 1906, years before New York granted women the right to vote and years before the ratification of the 19th Amendment.

In her last speech, she told the audience at a Baltimore convention: [48]

SBA: (*standing*) "I am here for a little time only, and then my place will be filled The fight must not cease. You must see that it does not stop. Failure is impossible."

NARRATOR 1: Susan B. Anthony's conviction is still on the books today, and her \$100 fine remains unpaid. A likeness of her sits in the Ontario County Courthouse in Canandaigua, New York.

[49]

It bears the inscription: **[49 -- Justice denied here]** "Susan B. Anthony -- Justice denied here, 1873."

**This script and the accompanying slides were prepared by
the Federal Bar Council Inn of Court**